IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.825 OF 1995
IN
SUIT NO.2301 OF 1995

Smt.Ayodhya Kumari Sah — Plaintiff

versus

Smt.Smita Rajeev Sah and anr. — Defendants

and

Roop Narain Sah and others — Respondents

Shri A.A.Joshi i/by L.J.Law for plaintiff.
Mr.Phiroz Palkhiwala with Mr.Amol Banare i/by Udwadia Udeshi & Co. for defendants.
Mr.P.K.Samdani with Mr.Swapnil Bangur i/by Meghraj & Associates for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 14th March 2006

PC :

1. Heard Shri Palkhiwala appearing for defendant no.1 in support of this Chamber Summons, Shri Joshi appearing for plaintiff and Shri Samdani - learned Senior Counsel for respondents.

2. This Chamber Summons prays that respondents be ordered to be impleaded as party defendants in the above suit. This is the only relief that has been pressed in this Chamber Summons, which is filed as early as on 4th September 1995.

3. It appears that this Chamber Summons was placed before a learned Single Judge of this Court who rejected it and the said order has been set aside by a Division Bench of this Court vide order dated 29th July 2005 in Appeal No.798 of 1996.

4. With the assistance of learned counsel appearing for the parties I have perused this order and in my view, it concludes the issue as to whether the respondents herein could be impleaded as parties to the suit. However, lengthy arguments have been canvassed to this effect that the said order does not decide the issue. It states that the Chamber Summons would be decided after written statement of the first defendant in the suit is placed on record. None dispute that the written statement is filed and the pleas raised therein are in consonance with the affidavit in support of this Chamber Summons and further affidavits on record.

5. The larger issue which is canvassed namely, whether in a suit for administration of estate of the deceased, who are necessary parties? Is it incumbent upon the plaintiff to implead all

family members including those who do not have a share as proper parties? These issues need not be decided because of the observations of Division Bench in this case.

6. Shri Palkhiwala - learned counsel appearing in support of this Chamber Summons invites my attention to the plaint and states that in the plaint relief claimed is that the estate of the deceased Rajivkumar Sah be administered by and under the directions of this Court. Further, this Court should declare that the plaintiff is entitled to one third undivided share in the estate of deceased. Alternatively, this Court should determine and declare the share of the plaintiff in the estate of deceased. The particulars of all the assets and estate left by deceased should be disclosed by the first defendant.

7. The plaint proceeds on the basis that the 63 year old mother of the deceased is entitled to succeed to the estate left by him because she is an heir and legal representative according to the Law of Succession by which the deceased was governed. At Annexure-A to the plaint, is a list of properties left behind by the deceased. The

specific assertion is that parties are governed by Hindu Succession Act, 1966. The averments with regard to the first defendant being an inter meddler, are to be found in paras 5 and 6 of the plaint. Thereafter, several accounts and correspondence pertaining to the estate are disclosed. There are several companies in which the deceased had a share and particulars thereof are also disclosed in the plaint.

8. In the light of the settled principle of law namely, in such a suit even first defendant could be said to be a plaintiff, the present Chamber Summons has been moved for impleading respondents as defendants.

9. In the affidavit in support it has been contended by first defendant that after the death of the deceased who is her husband, the suit as filed impleads first defendant and the daughter of the deceased as party defendants. Now, father-in-law and other members of family are sought to be impleaded as party defendants and in the light of contents of the affidavit in support it is contended that for the purposes of fairly, correctly and completely administering the estate of the deceased husband of first defendant, it is

absolutely necessary that all properties/ companies in which the deceased had an interest and share of which the plaintiff and respondents are fully aware and some of which are under their control, be disclosed to this Court. It is pointed out in paras 7 and 8 of the affidavit in support that respondents are aware of the properties and companies of the deceased and they have not been set out completely by the plaintiff. The respondents are inter-meddling therewith and therefore, it is necessary that they be impleaded as party defendants to the suit. Moreso, because deceased husband of first defendant had an interest in the share in HUF of the father in law as well.

10. The affidavits that have been filed by the father-in-law proceed on the basis that assertions made as above, are not correct. It is contended, both by the respondents as well as by the plaintiff, that the application is not bona fide. It is contended that the application is with ulterior motives. The plaintiff is "dominus litus" and therefore, has decided whom should be impleaded as party defendants. The respondents are neither heirs nor legal representatives of the deceased, nor entitled to any of the estate

of the deceased, and, therefore, their presence is not at all necessary.

11. Shri Samdani - learned Senior Counsel appearing for the respondents has taken me through the affidavits filed by the respondents and contended that the respondents including father-in-law are not holding any interest in the properties/business left behind by the deceased. It is contended that none of the properties are in the custody of the respondents and they have nothing to do with the suit herein. He has invited my attention to several judgements of Hon'ble Supreme Court and other Courts making a distinction between impleadment of parties to the suit as necessary parties and proper parties. He submits that necessary parties are those whose presence must be ensured by the Court and as far as proper parties are concerned, although no relief may be claimed as against them, their presence assists the Court in effectually and properly deciding the controversy in suit. He submits that the judgements of Supreme Court are making a clear distinction in that behalf he relies upon a decision reported in Judgement Today-1992(2)-SC-116 (Ramesh Hiranand Kundanmal Vs. The Municipal Corpn. of Greater Bombay and

others). He submits that the test which is established is that in order that a person may be added as a party to a suit, he should have a direct interest in the subject matter of the litigation whether it be the questions relating to moveable or immovable property. In this decision, according to Shri Samdani, the Hon'ble Supreme Court has very clearly held that the main object underlying Order I, Rule 10 is not to prevent multiplicity of proceedings although it may incidentally have that effect. It is a consequence of the rule rather than its main object, is the submission of Shri Samdani. He has relied upon several decisions of High Courts of Patna, Punjab & Haryana, M.P; Madras and contended that as far as suit of the present nature is concerned, it is not necessary that the respondents should be impleaded as parties. In his submission, the Hon'ble Madras High Court as early as in 1926 and thereafter the Madhya Bharat High Court held that all members of joint family need not be made parties to the suit in an administration suit. Person claiming adverse title to the estate of deceased is not a necessary party and therefore, according to Shri Samdani, the Chamber Summons deserves to be dismissed.

12. His submissions are adopted by Shri Joshi appearing for the plaintiff and in addition he invites my attention to the written statement and contends that the pleas raised therein, of family arrangement and at the same time partition, are clearly inconsistent and considering the same, the Chamber Summons cannot be granted.

13. After hearing both sides it is apparent to me that the Division Bench has not accepted the pleas of respondents and the original plaintiffs herein that in an administration suit a party is not entitled to a share in the estate of the deceased cannot be impleaded as party defendant in the suit. The observations in paras 4 and 5 of the Division Bench order read thus :-

> "4. We find it too wide a statement of law that in an administration suit the property who is not entitled to the share in the estate of the deceased cannot be impleaded as party defendant in the suit. There may be circumstances in a case where though a person may not be entitled to the estate of the deceased yet his presence in the suit may enable the court in deciding the case finally and effectually.
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> 5. In the administration suit, an enquiry has to be made to determine the estate of the deceased person. In a given situation though a person may not

> be entitled to any share in the estate of the deceased but his presence may be necessary to determine the estate of the deceased person. This would depend on the given fact situation."

14. The Division Bench in para no.6 of this order has observed that defendant has not filed written statement. At the same time, the Division Bench has held that the Chamber Summons is maintainable at the instance of first defendant because in a suit for administration of estate of the deceased, the defendant can claim relief as if he is a plaintiff.

15. The Chamber Summons is remitted back only because written statement was not filed in the suit. Now, even that is filed. In the written statement, apart from elaborating the pleas which are raised in the affidavit filed in support of the Chamber Summons, first defendant has in paras 4 and 5 set out the names of the persons who were residing together with the deceased in a joint family house at Jaipur as part of HUF.. Admittedly, the names of respondents are mentioned therein. In para no.5 the specific case is that all family members were residing as a joint family of which one of the respondent (Roop Narian Sah and father-in-law of the first

defendant) was the Karta. It is averred that the deceased had a right in the properties which are belonging to the HUF.. It is contended that the properties were held by joint family and yielded income . It was used by the joint family for their income and expenses. Portions of the properties allotted to the deceased by the joint family are also mentioned in the above referred paragraph of written statement. The joint family's properties are listed to the best of the knowledge of first defendant at Annexure-II to the written statement and a reference to that is at para no.7. There is an alternate plea that assuming and without admitting that there is no family arrangement, first defendant is entitled to share of the deceased in the property. A reference to the family arrangement is made in paragraph no.8 of the written statement. The fall out or consequence of family arrangement and a suit being filed in this Court by first respondent, is referred to in paragraph 9 and orders therein are annexed as annexures to the written statement. Thus, in the written statement the first defendant has made reference to several aspects of the dispute and included properties which have just been touched upon in the plaint and not elaborated at all.

16. If the properties which are referred are ultimately included in the estate, then plaintiff's share along with first defendant and the daughter of deceased would get enlarged. There are suits filed in the City Civil Court and in the High Court and there is company petition as well. Paragraphs 15 and 16 of the written statement read thus :-

> "15. Under the circumstances stated above and in view of the said family arrangement which is to the knowledge of the Plaintiff, the present suit is entirely misconceived and baseless. By the said family arrangement, it was agreed that no member of the joint family would have or claim any right, title or interest whatsoever in the said companies and the said flat which were to be held and managed jointly on joint tenancy basis by the said deceased and the first Defendant. On the death of the deceased, all the said assets jointly held by the first Defendant and the deceased would come to the first Defendant herein, and there is no question of the Plaintiff or any body else now claiming any rights thereto.
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> 16. Without prejudice to the said family arrangement and in the alternative, and in the event of this Hon'ble Court proceeding on the basis that there was no such family arrangement, then, in that event, it is submitted that the present suit must relate to administration of the entire estate of the said deceased, including the share of the said deceased in the joint family properties of the HUF of the said Roop Narain Sah. The present suit seeks to administer only some of the

> properties/estate of the said deceased, mainly those in Mumbai, without including the personal properties of the said deceased in Rajasthan, as also the deceased's share in the HUF properties of the said HUF of the said Roop Narain Sah. These other properties in which the said deceased would have a share have been specifically and deliberately excluded and suppressed by the Plaintiff. The first Defendant is not aware of the exact properties in which the said deceased had a share, of which the Plaintiff, the said Roop Narain Sah and the other members of the HUF are aware. However, the first Defendant has prepared a list of such assets, properties and companies in which the said deceased had an interest/share to the best of her knowledge from the documents available with the first Defendant, which list is at Exhibit 5 annexed hereto. The Plaintiff as well as the said Roop Narain Sah and other members of the HUF of the said Roop Narain Sah were and are in control of, intermeddling with, and dealing with and disposing of several of the said assets and properties in a totally wrongful manner and without accounting for the same to the Defendants who have a share therein. Being in knowledge of such assets, the Plaintiff and the members of the HUF of Roop Narain Sah are concealing the same from the Defendants and this Hon'ble Court. It is also submitted that there may be several other assets, properties and companies in which the said deceased had a share, and which are to the knowledge of the members of the joint family including the Plaintiff, which have not been disclosed, and are suppressed by the Plaintiff."

17. From a perusal of the materials including the written statement, I am satisfied that after filing of written statement the first defendant has made out a case for grant of relief in terms

of prayer clause (a) of the Chamber Summons. Moreover, the order of Division Bench has become final.

18. All judgements brought to my notice need not be referred to. In AIR-2005-SC-2209 (Amit Kumar Shaw and another Vs. Farida Khatoon and another) the Hon'ble Supreme Court has observed that object of Order I, Rule 10 is to discourage denial of justice on technical pleas and to save honest and bona fide claimants from being non suited. The power to strike out or add parties can be exercised by the Court at any stage of proceedings. In paras 9 and 10 this is what the Supreme Court has observed :-

> "9. The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases :
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> (1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or
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> (2) When, without his presence, the questions in the suit cannot be completely decided.
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> 10. The power of a Court to add a party to a proceeding cannot depend solely on

> the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right."

19. From a perusal of these observations, it is apparent that the Court must exercise it's power when a person ought to have been joined as plaintiff or defendant, is not so joined and when without his presence the question of the suits cannot be completely decided. Similarly, the power of a Court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person is affected if he is not added as party. Such right, however, will necessarily involve a enforceable legal right. In a later decision of Supreme Court reported in AIR-SC-2005-2813 (Kasturi Vs. Iyyamperumal and others) a Three Judge Bench of Hon'ble Supreme Court has once again referred to the object and purpose of Order I, Rule 10 and in paras 5 and 6 of this decision it observes thus:-

> "5. Let us therefore, confine ourselves to the provision of Order 1, Rule 10, sub-rule 2) of CPC which has already been quoted hereinabove. From a bare perusal of sub rule (2) of Order 1, Rule 10 of

the CPC, we find that power has been conferred on the Court to strike out the name of any party improperly joined whether as plaintiff or defendant and also when the name of any person ought to have been joined as plaintiff or defendant or in a case where a person whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. In the present case, since we are not concerned with striking out the name of any plaintiff or defendant who has been improperly joined in the suit, we will therefore only consider whether the second part of sub rule (2), Order 1, Rule 10 of the CPC empowers the Court to add a person who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

6. In our view, a bare reading of this provision namely, second part of Order 1, Rule 10, sub rule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party."

One of the test now laid down by the Hon'ble Supreme Court is that no effective decree can be passed in absence of the party proposed to be joined.

20. In the present case, considering the pleas raised in the plaint and the relief which is sought from the Court namely administration of the estate of deceased, to my mind, the presence of respondents is necessary to effectively and completely adjudicate upon the controversy and settle all questions finally as also to pass effective and proper decree in the suit.

21. Once, the Division Bench has observed that the question whether they have an interest in the estate of the deceased is not something which would be determinative then in peculiar facts of this case the Chamber Summons deserves to be made absolute in terms of prayer clause (a). Amendment to be carried out within a period of four weeks. Upon amendment being carried out and amended plaint being served on the respondents, it would be open for them to file their written statements and such written statements to be placed on record within a period of 12 weeks from

the date of receipt of amended plaint. All contentions of parties on merits are expressly kept open. Pleas raised by both sides including the interest of parties in the subject matter of the suit and the properties enlisted therein are not decided by this order.

22. Needless to state that after the respondents are impleaded as party defendants, it would be open for the first defendant and the plaintiff to file such applications as are permissible in law for protection of the estate of the deceased. All contentions of both sides in that behalf are also kept open.

(S.C.DHARMADHIKARI, J.)